

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO: 1:22-cv-00012-WO-JEP

SUSIE JORDAN, as parent and
Guardian *Ad Litem* of A.E.J (a minor)
and B.A.J. (a minor), and SUSIE
JORDAN, individually,

Plaintiff,

v.

CHATHAM COUNTY SCHOOLS, in
its official capacity; DAN BARNWELL;
G. DOE (a minor); M. DOE (a minor);
GYM TEACHER DOE A; GYM
TEACHER DOE B; DOES 1 through
20,

Defendants.

**CHATHAM COUNTY BOARD OF
EDUCATION’S MOTION TO
DISMISS**

The Chatham County Board of Education (“Board”), by and through its attorneys moves the Court pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss Plaintiff’s claims in this action. In support of its motion, the Board respectfully shows the Court the following:

1. Plaintiff has named an improper party—the “Chatham County Schools”—as defendant in this matter. Plaintiff’s claims against this party should therefore be dismissed for lack of subject matter jurisdiction and lack of personal jurisdiction pursuant to Rules 12(b)(1) and (2).

2. Notwithstanding the Board’s contention that Plaintiff has named an improper party to this lawsuit, Plaintiff’s claims against employees of the Chatham

County Board of Education are duplicative of any claims Plaintiff may have against the Chatham County Board of Education and should be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

3. Plaintiff has no standing to bring claims on behalf of B.A.J. and A.E.J. as they are over the age of eighteen. Plaintiff's claims on behalf of B.A.J. and A.E.J. should therefore be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1).

4. Notwithstanding the Board's contention that Plaintiff has named an improper party to this lawsuit, any state-law tort claims Plaintiff may have against the Chatham County Board of Education should be dismissed under Rule 12(b)(1) and 12(b)(2) because the Board has not waived its governmental immunity for suits of this kind.

5. Notwithstanding the Board's contention that Plaintiff has named an improper party to this lawsuit, Plaintiff has failed to state claims against the Chatham County Schools upon which relief may be granted. As a result, Plaintiff's claims under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, as well as Plaintiff's negligent infliction of emotional distress claims, should be dismissed pursuant to Rule 12(b)(6).

6. In support of its Motion to Dismiss, the Board relies on Plaintiff's Complaint and the following affidavits described below:

<u>Exhibit</u>	<u>Document</u>
1	Birth certificates of B.A.J. and A.E.J.
2	Affidavit of Melody Coons
3	Affidavit of Tony Messer

Pursuant to Local Civil Rule 7.3(a), M.D.N.C., a Memorandum of Law in support of this motion is being submitted contemporaneously with the motion.

Based on the foregoing, the Board respectfully moves this Court to dismiss all claims against the Chatham County Schools with prejudice and to order such other relief as justice requires.

This the 14th day of November 2022.

Respectfully submitted,

/s/ Lindsay Vance Smith

THARRINGTON SMITH, L.L.P.

Lindsay Vance Smith

N.C. State Bar No. 48085

150 Fayetteville Street, Suite 1800

Post Office Box 1151

Raleigh, North Carolina 27602-1151

Telephone: (919) 821-4711

Fax: (919) 829-1583

E-mail: lsmith@tharringtonsmith.com

*Attorney for Chatham County Board of
Education*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing **CHATHAM COUNTY BOARD OF EDUCATION'S MOTION TO DISMISS** was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such to the following:

Keith Altman
West 12 Mile Road, Suite 375
Farmington Hills, MI 48331
Email: keithaltman@kaltmanlaw.com
Attorney for Plaintiff

This the 14th day of November 2022.

THARRINGTON SMITH, L.L.P.

/s/ Lindsay Vance Smith